In the High Court of Uttaranchal, at Nainital.
Criminal Appeal No. 1949 / 2001
(Old No. 1834 / 1981)

Cantonment Board Ranikhet
Through Cantonment Executive Officer ..Appellant.
Versus

1-Harihar Singh Bangari S/o Raje Singh
Bangari Spring Field Ranikhet.
2-Surendra Lal Sah S/o Ratan Lal Sah
Dholikhet Ranikhet
3-State of U.P. ... Respondents.

Hon'ble B.C. Kandpal, J.

List has been revised. None has appeared on behalf of the appellant.

2- The file of this case was transferred from the Allahabad High Court. After transfer of the case, notices were issued to the parties.

3- Heard Sri J.S. Virk, learned counsel for the respondent No.2, learned A.G.A. for the State and perused the record.

4- This appeal has been preferred by the Cantonment Board, Ranikhet, against the order dated 30-1-1981, passed by Munsif Magistrate, Ranikhet in Criminal Case No. 269 of 1980, U/S 210/213 of Cantonment Act, 1924, P.S. Ranikhet, thereby acquitting the respondents 1 and 2 under the aforesaid Sections.

5- Brief facts of the case are that the respondents 1 and 2 were prosecuted by the Executive Officer of Cantonment Board, Ranikhet for having contravened the provision of Section 210 (1)(i) of the Cantonment Act

(hereinafter referred to as the Act), an offence punishable U/S 213 of the Act.

6- The basis of the prosecution was that the respondents had opened the foreign liquor shop within the precincts of Cantonment Board, Ranikhet without obtaining any licence prescribed U/s 210 (1)(i) of the Act. The trial court after having perused the entire material available on the record and hearing the learned counsel for the parties, was pleased to dismiss the complaint thereby acquitting the respondents vide judgment and order dated 30-1-1981.

7- Feeling aggrieved by the aforesaid judgment and order the appeal was preferred before the Allahabad High Court which was ultimately transferred to this court after creation of the separate State.

8- The facts were admitted to the parties and the defence was taken by the respondents that no licence is required U/S 210(1)(i) of the act, therefore, the prosecution could not have been launched against them.

9- Section 210 (1) of the Act provides that-

"No persons of any of the following classes, namely:-

* * * * * * * * *

(i) venders of any medicines, drugs or articles of food or drink for human consumption (other than the flesh of pigs, milk, butter, bread, biscuits, cakes, fruits, vegetables, aerated or other potable water or ice or ice-cream) which are of a perishable nature;

* * * * * * * * * *

shall carry on his trade, calling or occupation in any part of a cantonment unless he has applied for and obtained a licence in this behalf from the Board."

9- The provision of aforesaid Section clearly shows that the licence U/S 210 (1)(i) of the Act is required only for dealing in articles of food or drink for human consumption which are of a perishable nature. There is nothing on record to show that foreign liquor is a perishable item, therefore, the provisions of Section 210 of the Act could not come into force for dealing in the foreign liquor and no licence is required for the same. The complaint was filed by the appellant before the court below in respect of the contravention of Section 210(1)(i) of the Act, which is punishable U/S 213 of the Act. As there is no contravention of the aforesaid provision of the Act, therefore the respondents have been rightly acquitted by the court below.

10- The trial Judge while acquitting the respondent Nos. 1 and 2 has recorded the cogent and valid reasons and the impugned judgment, therefore does not require any interference. The finding of the trial court is neither perverse nor unreasonable, hence it is not liable to be disturbed.

11- I do not find any ground for interference in the impugned judgment and order passed by the trial court. The appeal lacks merit and is liable to be dismissed.

12- Accordingly the appeal is dismissed.

(B.C. Kandpal, J.)

Dated: 14-07-2006
ISB